

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

D.G., by Next Friend G., Gail Stricklin, et  
al.,

Plaintiffs,

vs.

C. BRAD HENRY, in his official capacity  
as Governor of the State of Oklahoma,  
et al.,

Defendants.

Case No. 08-CV-74-GKF-FHM

**OPINION AND ORDER**

This Order establishes the initial procedure<sup>1</sup> for the production of case files by the Oklahoma Department of Human Services (DHS) for review by Plaintiffs' expert and sets a status hearing to monitor the progress of the production ordered herein. Prior to entering this Order, the Court has carefully considered the filings regarding these issues, Docket Nos. 351, 363, 379, 381, and the argument of counsel at the hearing on May 18, 2010.

A status hearing before the undersigned United States Magistrate Judge is set for July 1, 2010, at 9:30 a.m. in Courtroom 2.

By May 25, 2010, DHS shall provide Plaintiffs with a final list of all class members with current placement types and permanency goals;

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<sup>1</sup> Although Plaintiffs argue that 400 files can reasonably be produced in 8 weeks and DHS argues that its experience in producing the files of the named Plaintiffs indicates it may take twice that amount of time, the record is insufficient for the court to make a factually informed decision as to what amount of time is reasonable. By the July 1, 2010 status hearing, the Court and parties will have the benefit of the actual experience with this initial procedure and an informed decision can be made.

By June 1, 2010, Plaintiffs shall provide DHS with a list of 200<sup>2</sup> case files Plaintiffs desire to review:

- DHS shall only disclose Plaintiffs' list of case files to be reviewed to the employees involved in the collection and copying of the files;
- DHS shall only make changes, additions, or deletions to the files selected for review by Plaintiffs in the ordinary course of business;

DHS shall produce a Bates-stamped copy<sup>3</sup> of the files selected by Plaintiffs on a rolling basis as the files are completed. The rolling production shall occur at a minimum weekly on: June 4, 2010; June 11, 2010; June 18, 2010; and June 25, 2010:

- The case files shall include the KIDS file, the paper file, and any investigations. At this time, DHS is not required to produce any private agency files. That issue will be revisited at the hearing on July 1, 2010;<sup>4</sup>
- DHS shall not limit its production of files to the estimated number of files in its Case Management Response Brief. [Dkt. 365]. DHS shall diligently produce as many files as reasonably possible using at least the staff resources set forth in its Case Management Response Brief.

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<sup>2</sup> The Court selected 200 case files in order to obtain the potential benefit of the efficiencies in collecting, Bates stamping, and copying a large number of files. Future productions may involve a smaller number of identified files if problems associated with this initial procedure arise.

<sup>3</sup> The undersigned will not require as part of the discovery process that Plaintiffs record the Bates-stamp number of the documents Plaintiffs' expert relied upon in forming his opinion. All issues related to the experts are reserved for the trial judge.

<sup>4</sup> The agency files are not included at this time because the Court is not persuaded this discovery meets the needs of the case considering the burden of this discovery and the importance of this particular information to resolving the issues in the case. Fed. R. Civ. P. 26(b)(2)(c)(iii). After Plaintiff's review of the files produced in this initial procedure, Plaintiffs may present additional information on this topic for the Court's consideration.

By June 30, 2010 at noon, DHS shall file a status report on its case file production efforts, including the number of case files produced, the number of employees who worked on the production, and the number of hours spent working on the production. DHS shall also set forth its proposal for future production;

By June 30, 2010 at noon, Plaintiffs shall file a status report on the case file production and Plaintiffs proposal for future production.

SO ORDERED this 19th day of May, 2010.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE